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C O N F I D E N T I A L SECTION 01 OF 02 MAPUTO 000145

SIPDIS

STATE FOR AF/S, AF/EPS, EB/IFD/OIA  
DEPT PASS TO MCC FOR HARRINGTON AND GAULL  
NSC FOR TEITELBAUM

STATE PASS OPIC FOR WATSON AND SHORE

E.O. 12958: DECL: 01/31/2015

TAGS: [EINV](#) [MZ](#) [OPIC](#)

SUBJECT: OPIC/NYATI BEACH DEVELOPMENTS - U.S. INVESTOR  
EVICTED, SUPREME COURT ORDERS EVICTION SUSPENDED

REF: A. MAPUTO 25

[1B](#). 2004 MAPUTO 1539

[1C](#). 2004 MAPUTO 1446

Classified By: Ambassador Helen La Lime, Reasons 1.4(b) and (d)

[11](#). (C) Summary: OPIC-supported American investor Dave Herbert was evicted from his Nyati Beach Lodge on January 6 based on a new provincial court order. Mozambique High Court has issued a dispatch suspending that order, but the provincial judge has refused to enforce the suspension. Mr. Herbert and his legal team are trying to determine how to ensure that the High Court order is quickly enforced. His lawyers have heard about a power the Prime Minister has to compel enforcement, but we do not know how applicable this is. Ambassador has engaged several senior GRM officials, including the Foreign Minister, an adviser to outgoing President Chissano, and the Justice Minister. Both Chissano and Prime Minister Diogo have been actively involved. The Ambassador has been informed that the provincial judge will not be allowed to defy the Supreme Court dispatch indefinitely, but we are not able to predict when the issue will be resolved. President-elect Guebuza will be inaugurated February 2 and his government named soon afterwards, and the transition may be complicating matters. Post will engage the officials of the new government on Mr. Herbert behalf. End Summary.

Claimant Obtains New Order, Evicts Amcit

[12](#). (SBU) On January 6, Zimbabwean claimant Rex Potter arrived at OPIC-supported Amcit investor Dave Herbert Nyati Beach Lodge with Inhambane provincial police in order to take possession of the property and evict guests and staff. Potter claim is based on a 1994 concession that includes land on which the Nyati Lodge stands, along with March 2004 and October 2004 rulings by the Inhambane provincial judge confirming his rights to the land (ref C). Since mid-October 2004, Potter had attempted previous evictions of the lodge with private security forces in tow. The October order had no provisions for eviction, so Minister of Interior Almerino Manhene had previously denied Potter the use of local police for his evictions attempts. Potter obtained on January 3 an order that did authorize the use of police for eviction.

[13](#). (SBU) There was no reported physical violence or property damage in the eviction. The Danish guests who wished to remain were allowed to stay for the remainder of the weekend. Mr. Herbert staff and guests had been fully evicted by early the following week. There were no American guests at the lodge at the time of the eviction.

President Intervenes, Supreme Court VP Acts

[14](#). (SBU) According to Mr. Herbert, Minister of Environment (and Vilanculos Wildlife Sanctuary board member) John Kachamila convinced President Chissano to intervene. On January 10, Chissano reportedly called High Court President Mario Mangaze, who told him he had never received the order that Attorney General Madeira had told the Ambassador on November 23 that he would send (ref B). Chissano then reportedly called Madeira, who told him that the order had actually never been sent. Chissano then organized a meeting of Mr. Herbert legal team with Vice President of the High Court Luis Sacramento; Judge Sacramento told the lawyers that if they filed an appeal directly to the High Court the next day, he would issue a suspension order a week later.

[15](#). (SBU) On January 19, Judge Sacramento issued a dispatch to the court in Inhambane, ordering the court to issue a suspension of its January 3 order, which had authorized eviction. (The October 2004 order was left untouched.)

Provincial Judge Refuses to Comply

[16](#). (SBU) The Inhambane judge refused to issue the order, however, allowing Inhambane police to continue occupying the Nyati Lodge, in defense of Mr. Potter and his partners. Emboff spoke with the Interior Minister Chief of Staff on January 24 and also on January 26. The official said that the provincial police could not act without an order from the provincial judge, and that the Ministry had its hands tied. Embassy legal counsel reinforced that opinion, and post decided that a meeting with the Minister of the Interior would not be productive.

#### Foreign Minister Confirms Presidential, PM Involvement

17. (C) On the afternoon of January 26, Ambassador raised with Foreign Minister Leonardo Simao the USG concern over the delay in enforcement of the court order. Simao confirmed that President Chissano had tried to help resolve the matter, and he said that Prime Minister Diogo had taken action in the last week as well. He said that the Mozambican system would not tolerate disobedient judges, but added that he could not say when he thought the situation would be reversed. He urged the Ambassador to talk with the Minister of Justice, Jose Abudo. He added that contacting the Minister of Interior would be neither appropriate nor effective.

#### Possible Alternate Enforcement Method

18. (SBU) Later that afternoon, Mr. Herbert informed post that Judge Sacramento had told one of Herbert attorneys that morning that he (Sacramento) could not order the Interior Minister to enforce Sacramento order, but that the Executive, in the form of the Prime Minister, had the power to enforce judicial decisions by issuing orders to provincial governors, who are appointed by the Council of Ministers. It was not clear whether Mr. Herbert attorneys had already contacted the Prime Minister office.

19. (SBU) Post reviewed this issue with legal counsel immediately, as it had been announced that the Chissano government would be dissolved as of midnight that night in preparation for the February 2 inauguration of President-elect Guebuza. Counsel, who had not heard of the mechanism, believed that the chain of command described by Mr. Herbert seemed plausible, but he could not guarantee that the mechanism was legal, or confirm that it was accepted practice. Post decided that the lack of information about precedent and procedure for this mechanism, the imminent dissolution of the government, and the fact that the Prime Minister was already engaged in the matter and presumably aware of her authority, meant that an approach would not be productive at that time.

#### Presidential Advisor Expects Eventual Resolution

10. (C) On January 27, the Ambassador discussed the provincial judge defiance of the High Court dispatch with Ambassador Carlos dos Santos, a close adviser to President Chissano. Dos Santos confirmed that President Chissano had taken action. He further indicated that the Supreme Court dispatch was largely due to the efforts of Tourism Minister Sumbana. Dos Santos agreed that the insubordination of the provincial judge would not be allowed to stand. However, he asked for understanding of the delays, saying that the government was going through a difficult transition as government officials prepared to make way for the incoming government. On January 28, the Ambassador raised the case with Minister of Justice Abudo. The Ambassador spoke to Dos Santos again at the investiture of the new National Assembly on January 31, and dos Santos said he had made another approach to the head of the Supreme Court. He doubted that the outgoing Justice Minister could do much at this point, and he told the Ambassador he would get back to her.

#### Obstruction Charges Against Herbert

11. (SBU) Separately, Mr. Herbert attended a hearing on January 27 to face obstruction of justice charges filed by Potter related to the October order. Post spoke with Mr. Herbert on January 26 and twice on January 27. Mr. Herbert declined post offer to have an officer attend the hearing, saying that the worst that could happen was that a trial could be ordered. The hearing was non-eventful; the prosecutor will continue to study the case, and no decision to hold a trial has been taken.

#### Next Steps and Comment

12. (SBU) President-elect Guebuza takes office February 2, and we expect his ministers to be appointed that night or on the next day. Post will continue its efforts on behalf of Mr. Herbert with the new government on all appropriate occasions.

LA LIME